IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.325 OF 2004

Oriental Insurance Co.Ltd. ... Petitioners

v/s

The Chief Engineer, Power and Electricity Department, Aizawal ... Respondent

Mr V. Kantharia with Mr Anurag Gokhale i/b M/s M.V. Kini and Co. for Petitioners.

Mr H.H. Trivedi for Respondent.

CORAM : D.K. DESHMUKH J.

DATE : 29TH AUGUST 2005.

P.C. :-

1. By this petition, the petitioners challenge the award dated 5th February 2004 made by the Arbitral Tribunal. By that award, the petitioners have been directed to pay an amount of Rs.57,34,894/- with interest. The said amount has been awarded by the Arbitral Tribunal under various heads. Before me, the award is challenged on four grounds - (i) that the Arbitral Tribunal has directed the petitioners to pay an amount of Rs.33,186/- towards transit insurance charges though the petitioners had denied its liability to make payment of these charges without raising an issue about this and without recording any finding as to how the petitioners are liable to pay this amount; (ii) that the Arbitral Tribunal by award has directed the petitioners to pay Rs.28,898/- towards bank charges. The petitioners had denied its liability to make payment of bank charges. The petitioners had raised an issue about it but in the award, there is no discussion and without recording a finding that the petitioners are liable to pay bank charges, the Arbitral Tribunal has directed to make payment of bank charges; (iii) it is urged on behalf of the petitioners that what was tendered by the petitioners was aluminium cable and what

was supplied was copper cable, however, the petitioners were directed to pay for copper cable; (iv) as per the insurance policy, the duty of the respondent to proceed against the transporter as the vehicle met with an accident, but the respondent did not take steps which he was under a duty to take to mitigate the loss.

2. So far as the first two grounds are concerned, the learned counsel appearing for respondent does not dispute that the issue was raised by the petitioners. He also does not dispute that in the arbitration award, there is no finding recorded as to how the petitioners are liable t pay those amounts to the respondent. In this views of the matter therefore, the award made by the learned Arbitrators in relation to these two heads will have to be set aside.

3. So far as the third ground regarding copper cable is concerned, the learned Arbitrators have observed in the award that what was insured by the petitioners was the goods as supplied by the manufacturer to the respondent and not the goods for which order was placed or tendered. The gods supplied by the manufacturer were copper cables and therefore, it was copper cable which was insured and therefore, the respondent was entitled to make a claim in relation to the copper cable. I do not find any patent error in the

finding that is recorded by the Arbitral Tribunal considering the nature of the insurance policy.

4. So far as the fourth and last ground is concerned, it is true that there is a duty cast by the insurance policy on the respondent to take steps to mitigate the loss by making mandatory claim against the transporter. it appears that in the reply filed before the Arbitral Tribunal, the ground was raised but the Arbitral Tribunal did not frame any issue on this issue and not consider it. In the petition, there is no ground raised making a grievance that the Arbitral Tribunal did not raise an issue in this regard and did not record a finding in that regard. in the absence of the ground in the petition, a submission cannot be permitted to be made at this stage, especially because the submissions cannot be termed as submissions of law, at best the one submission of law and fact and therefore cannot be permitted to be raised without petitioners pleading about it in the petition. Taking overall view of the matter therefore, petition succeeds in part and is allowed. The award made by the learned Arbitrators awarding an amount of Rs.33,186/- towards transit insurance and the award made by the learned Arbitrators awarding an amount of Rs.28,898/- towards bank charges are set aside. The award is modified to that extent. As the award is modified for the reason that the learned

Arbitrators have not recorded findings in making the award, he respondent shall be at liberty to take steps that the law permits the respondent. Petition is disposed off. No order as to costs.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary of this Court as true copy.

. Certified copy expedited.